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Oath-Taking Under the Constitution

The Constitution requires oaths. The more visible of these oaths occur quadrennially when the President of the United States takes his high office. Less visible but absolutely fundamental are those oaths that bind thousands of government officials to the Constitution. Less visible still are those oaths required by the Constitution before a magistrate can issue a warrant. Today, the Senate begins an impeachment trial, a constitutional process that requires its own additional oath. Of all the grave questions that the Senate will face, perhaps the central one is this: "What does it mean to swear an oath?"

The Oath of the President. The Constitution requires every President-elect to swear an oath before he can become President. The Constitution specifies that oath, which is as follows:

"I do solemnly swear . . . that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

U.S. Const. Art. II, sec. 1, cl. 7.

The Oath of All Other Elected Officials. The Constitution also requires the Vice President, United States Senators and Representatives, *and members of every State legislature* to take an oath to support the Constitution. U.S. Const. Art. VI, cl. 3. For those officials within the National Government, that oath is as follows:

"I do solemnly swear . . . that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God."

5 U.S.C. §3331 (1994 ed.). (The Standing Rules of the Senate require U.S. Senators to both "take" the oath (orally) and "subscribe" to it (in writing). Rule III.)

The Oath Required of Others. Similarly, the Constitution requires "all executive and judicial Officers, both of the United States and of the several States" to take an oath to support the Constitution. U.S. Const. Art. VI, cl. 3.

In Impeachment Trials, Senators Are Required to be Sworn a Second Time. When sitting as a court of impeachment, the Constitution requires that Senators be sworn

again. This second oath is required as the Senate casts off its normal roles and assumes what Hamilton called its "judicial character." *The Federalist*, No. 65. The Constitution says:

"The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside. . . ."

U.S. Const. Art. I, sec. 3, cl. 6.

The Senators' Second Oath. The Senate has adopted special rules for regulating impeachment trials, and those rules specify the oath that Senators are required to take. The Chief Justice, who presides at the trial, takes the same oath. Here is today's solemn oath:

"I solemnly swear . . . that in all things appertaining to the trial of the impeachment of William Jefferson Clinton, now pending, I will do impartial justice according to the Constitution and laws: So help me God."

Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, Rules XXV, III & IV.

Oaths Required Before Warrants Can Issue. The Fourth Amendment expressly requires the taking of oaths. Commentary on the law of that amendment runs into millions of words, but the text alone is sufficient to impress upon the mind the significance of a solemn oath:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

U.S. Const. Amend. 4.

This paper has outlined the constitutional requirements for oath taking. Additionally, hundreds of other sections of Federal law require oaths. The word "oath" appears 709 times in the United States Code and 1,229 times in the *Code of Federal Regulations*.

What does it mean to solemnly swear to one of these oaths?

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In addition to the provisions discussed in the main text, the 14th Amendment contains a provision on oaths. After the Civil War, the Constitution was amended to prohibit certain persons from holding "any office, civil or military, under the United States or under any State." And who was disqualified? Only those who had *sworn an oath* to support the Constitution and then had rebelled. U.S. Const. Amend. 14, sec. 3.

The constitutional provisions (except the 14th Amendment's), the statutory provisions, and the rules provide that a person may swear an oath *or* make an affirmation, but this point is not made in the main text. 1 U.S.C. §1 makes the terms interchangeable within the Code.